

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

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FAIR HOUSING COUNCIL OF  
SUBURBAN PHILADELPHIA,

Plaintiff,

v.

WAGNER ENTERPRISES, LTD,

and

JAFO DEVELOPMENT  
CORPORATION, INC.,

Defendants.

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Civil Action No. 14-4523

**CONSENT DECREE**

Whereas, Plaintiff, Housing Equality Center (formerly Fair Housing Council of Suburban Philadelphia), filed a Complaint against Defendants, Wagner Enterprises, LTD. (“Wagner”) and JAFO Development Corporation, Inc. (“JAFO”) on July 30, 2014, alleging that they violated the Fair Housing Act, 42 U.S.C. §§ 3604(F), (“FHA”), by failing to design and construct the covered units at the Bordeaux Lofts at the Vineyard at Wagner Farms (“The Bordeaux Lofts”) located in Bethlehem Township, Pennsylvania in compliance with mandated accessibility requirements;

Whereas, Plaintiff and Defendants engaged in settlement negotiations to agree to a remedy that will resolve the remaining issues in this case amicably and avoids the risks and expense of further litigation;

Therefore, the parties agree to the following terms of this Consent Decree.

**I. WAGNER AND JAF0'S AGREEMENT TO MAKE FHA ACCESSIBILITY RETROFITS**

Wagner and JAF0 agree to fund and complete the following FHA accessibility retrofits in full settlement of the above referenced action within six (6) months of the Effective Date of this Consent Decree:

**A. Common Elements**

1. Provide ramps to noncompliant gazebos, where possible, to make them wheelchair accessible and remove remaining non-compliant gazebos.
2. Reassignment of the mailboxes to ensure that all covered units are assigned the lower, accessible mailbox compartments within the reach ranges specified by the Fair Housing Act Accessibility requirements.

**B. Merlot Drive Courtyard**

1. A parking bumper will be installed at each of the five (5) parking stalls abutting the sidewalk in front of building 1806, to prevent a car parking with its bumper over the sidewalk and encroaching on the required 36 inch sidewalk width for FHA compliance.

2. An FHA compliant curb ramp in accordance with the attached design will be installed to replace the curb ramp between buildings 1802 and 1806, near the accessible parking space.
3. An FHA compliant curb ramp in accordance with the attached design will be installed to provide access to the dumpster from building 1806.
4. The sidewalk alongside building 1806 with the dangerous cross slope (approximately 20' x 3') will be replaced with a new sidewalk that complies with FHA slope standards.
5. An FHA compliant curb ramp in accordance with the attached design will be installed to replace the curb ramp between buildings 1812C and 1810D, near the accessible parking space.
6. An FHA compliant curb ramp in accordance with the attached design will be installed to replace the curb ramp in front of building 1814C, near the accessible parking space.
7. An FHA compliant curb ramp in accordance with the attached design will be installed to provide access to the dumpster from building 1814.
8. An FHA compliant curb ramp in accordance with the attached design will be installed to replace the curb ramp in front of building 1808D, near the accessible parking space.
9. An FHA compliant curb ramp in accordance with the attached design will be installed to provide access to the dumpster from building 1808.
10. An FHA compliant curb ramp in accordance with the attached design will be installed to provide access to the dumpster from building 1792.
11. An FHA compliant curb ramp in accordance with the attached design will be installed to replace the curb ramp in front of building 1792D, near the accessible parking space.

**C. Chateau Place Courtyards**

1. An FHA compliant curb ramp in accordance with the attached design will be installed to replace the curb ramp in front of buildings 1801D & 1799C, near the accessible parking space.
2. An FHA compliant curb ramp in accordance with the attached design will be installed to replace the curb ramp in front of buildings 1783C & 1785D, near the accessible parking space.
3. An FHA compliant curb ramp in accordance with the attached design will be installed to replace the curb ramp in front of buildings 1791C & 1793D, near the accessible parking space.

**D. Wagner and JAFO Owned Units 1796A, 1796B, 1814B and 1798B Merlot Drive**

Wagner and JAFO agree to make all of the below FHA accessibility modifications to each of the following units: 1796A & B, 1814B and 1798B Merlot Drive, with the approval of the Condominium Association, upon the sooner of the turnover of the unit to a new tenant or within eighteen (18) months after the Effective Date:

1. Install an FHA compliant ramp in accordance with the attached ramp plans at each unit.
2. Elevate the back patio to ensure that the patio is flush with the level threshold of the sliding door at each unit.
3. Lower thermostats to comply with the FHA reach range requirements at each unit.
4. Replace entrance door hardware with lever handles at each unit.

5. Widen bedroom and den doorways in 1814B and widen walk-in closet doorways in 1796 A & B to provide a nominal 32 inch width opening as required by the FHA.

**E. Notice and Opportunity for Owners of Covered Units to Request Accessibility Modifications**

Defendants agree to issue a Notice through the Condominium Association to all owners of covered units at the Bordeaux Lofts within thirty (30) days of the Effective Date advising them of the opportunity to request that Defendants fund and complete all of the following FHA accessibility modifications to their unit:

1. Install an accessible FHA complaint entrance in accordance with the attached ramp plans.
2. Lower thermostats to comply with the FHA reach range requirements.
3. Replace entrance door hardware with lever handles.
4. Where needed, widen bedroom, bedroom walk-in closet and den doorways to provide a nominal 32 inch width opening.

The Notice shall advise the owners that they must notify Defendants' counsel of their request for any of the above modifications within thirty (30) days of their receipt of the Notice. The Notice shall provide the owners with the appropriate contact information for Defendants' counsel. Defendants shall then fund and install any of the above FHA accessibility modifications requested by any owner within four (4) months of receiving the request.

Defendants agree to fund and complete the above accessibility modifications upon request by owner for up to five (5) covered units. If more than five (5) owners make a request for accessibility modifications to their units, Defendants may contact Plaintiff's counsel to discuss whether Plaintiff would allow Defendants to substitute one of their units they agreed to make accessible in Section D above to instead meet that additional owner's request.

Defendants shall notify Plaintiff's counsel within fifteen (15) days after the expiration of the above time period for owners to make a request for modifications as to whether any such requests have been made and providing the unit number and location for any such requests.

**F. Applicable Standards**

All FHA accessibility modifications pursuant to Sections I.A – I.E above shall be designed and constructed in accordance with the Fair Housing Act design and construction requirements, 42 U.S.C. § 3604(f)(3)(C)(i)-(iii); the Fair Housing Act implementing regulations, 24 C.F.R. § 100.200 et seq., and the Fair Housing Act Accessibility Guidelines, 56 Fed.Reg. 9473-9515 (March 6, 1991) or other FHA recognized safe harbor.

**II. VERIFICATION OF FHA COMPLIANCE OF ACCESSIBILITY MODIFICATIONS TO COMMON AREAS AND COVERED UNITS**

**A. Pre-Construction Plan Review and Approval For Common Element Modifications And Modifications to Units 1796A, 1796B, 1814B and 1798B Merlot Drive**

Defendants shall provide Plaintiff's counsel with copies of the requisite site spot elevation plans and construction plans for each common element as identified in Section I.A – I.C above and Units 1796A, 1796B, 1814B and 1798B Merlot Drive within thirty (30) days of the Effective Date for review and approval by Plaintiff's expert. Plaintiff shall then have thirty (30) days to have the plans reviewed by its expert. Plaintiff will notify Defendants within fifteen (15) days after its expert reviews the plans of whether the plans meet with his approval or whether any revisions are necessary to ensure compliance with the FHA.

**B. Final Inspection**

Plaintiff shall have its expert conduct a full and final inspection of the accessibility modifications to common elements, Units 1796A, 1796B, 1814B and 1798B Merlot Drive, and any modifications to covered units pursuant to Sections I.A – I.E above within thirty (30) days after receiving the final reports delineated in Section III of this Consent Decree to ensure the compliance of the modifications with the FHA. Plaintiff shall notify

Defendants of the date and time of the inspection and shall promptly report to Defendants the findings of its expert.

### **III. REPORTS**

Defendants' counsel shall provide to Plaintiff's counsel a report advising of the completion of the retrofits to common elements and Units 1796A, 1796B, 1814B and 1798B Merlot Drive pursuant to Section I.A – I.D above within thirty (30) days after completion of any such retrofits.

Defendants shall also provide to Plaintiff's counsel a report advising of the completion of any retrofits pursuant to Section I.E above within thirty (30) days after the completion of any such retrofits.

### **IV. PAYMENT OF DAMAGES**

Defendants shall pay to Plaintiff, Housing Equality Center, damages in the amount of \$16,054 within thirty (30) days of the Effective Date.

### **V. PAYMENT OF ATTORNEYS' FEES AND LITIGATION COSTS**

Defendants shall pay Plaintiff's counsel, Disability Rights Pennsylvania, attorneys' fees and litigation costs incurred in this matter up to the Effective Date in the total amount of \$73,142.50 (the "Settlement Sum"). Defendants shall pay the Settlement Sum to Plaintiff's Counsel within thirty (30) days of the Effective Date.



## **VI. DISPUTE RESOLUTION**

Any dispute between or among the parties regarding an alleged breach of this Consent Decree, including any allegation that any work completed pursuant to Sections I.A –I.E above upon final inspection does not comply with the FHA Accessibility Requirements, shall be subject to the following dispute resolution process: (a) the party asserting that a breach has been committed shall give prompt written notice to the other party through their counsel; (b) within thirty (30) calendar days of receipt of the notice or as soon thereafter as practicable, Plaintiffs' counsel and Defendants' counsel shall confer in person or by telephone and attempt to resolve the dispute. The parties agree not to file any motion to enforce this Consent Decree until complying with the requirement to meet and confer and then only if the allegations of noncompliance have not been corrected as and when agreed upon.

## **VII. PLAINTIFF'S RELEASES**

Upon the Defendants' full compliance with the terms and conditions of this Consent Decree, Plaintiff hereby releases and discharges Defendants, its officers, employees, agents, successors and assigns from any and all claims Plaintiff has or had that Defendants violated any federal,

state or local disability laws, including but not limited to the FHA, from the beginning of time through the Effective Date.

Neither the decision to enter into this Consent Decree, the Consent Decree itself, nor anything done, stated or omitted pursuant to the Consent Decree shall constitute or be construed to be an admission or evidence of any violation of any law or obligation or of any wrongdoing, all such allegations being denied.

#### **VIII. APPROVAL, JURISDICTION, ENFORCEMENT, AND TERMINATION**

Plaintiff and Defendants will jointly present this Consent Decree to the District Court for approval. If the District Court approves the Consent Decree, it will retain continuing jurisdiction over this lawsuit for purposes of interpretation and enforcement of the Consent Decree.

The Consent Decree will terminate ninety (90) days after Defendants have fulfilled all of their obligations under Sections I - V of this Consent Decree, unless there is an enforcement motion pending or the Decree has been amended to change the termination date.

**IX. EFFECTIVE DATE**

The parties agree that the Effective Date of this Consent Decree shall be the date on which the Court approves the Stipulated Dismissal Order approving the Consent Decree and retaining jurisdiction for purposes of enforcement.

**SIGNATURES:**

By: */s Rocco J. Iacullo*

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Rocco J. Iacullo, Esquire

Counsel for Plaintiff,  
Housing Equality Center (form.  
Fair Housing Council of  
Suburban Philadelphia)

By: */s Julie Wagner-Burkart*

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Julie Wagner-Burkart, Esquire

Counsel for Defendants,  
Wagner Enterprises, Ltd. &  
JAFO Dev. Corporation, Inc.

Date: May 5, 2016